

HOUSE BILL 128

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EMERGENCY BILL

0lr0499
CF SB 135

By: ~~Delegate Rosenberg~~ Delegates Rosenberg, Anderson, and Dumais

Introduced and read first time: January 18, 2010

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2010

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Petition for Writ of Actual Innocence – Notice of Filing**
3 **and Hearing**

4 FOR the purpose of limiting to a person charged by indictment or criminal information
5 with a crime triable in circuit court and convicted of that crime the authority to
6 file a petition for writ of actual innocence under certain circumstances;
7 requiring a certain person who files a petition for writ of actual innocence to
8 notify the State of the filing in a certain manner; authorizing the State to file a
9 response to a petition for writ of actual innocence within a certain period of
10 time; requiring that the victim or victim’s representative be notified of a hearing
11 on a petition for writ of actual innocence before the hearing is held; establishing
12 that a victim or victim’s representative has the right to attend a hearing on a
13 petition for writ of actual innocence; repealing a provision of law authorizing the
14 court to dismiss a certain petition without a hearing if the court finds that the
15 petition fails to state a claim; authorizing the State or a certain petitioner to
16 appeal a certain order to the Court of Special Appeals within a certain time
17 period; requiring an appeal under this Act to follow the form and procedure set
18 by the Maryland Rules; authorizing the court to stay an order and set bail
19 under certain circumstances; authorizing the Court of Special Appeals to affirm,
20 modify, or reverse an order or remand a case for further proceedings under
21 certain circumstances; making this Act an emergency measure; and generally
22 relating to a petition for writ of actual innocence.

23 BY repealing and reenacting, with amendments,
24 Article – Criminal Procedure

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 8–301
 2 Annotated Code of Maryland
 3 (2008 Replacement Volume and 2009 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article – Criminal Procedure**

7 8–301.

8 (a) A ~~convicted~~ person **CHARGED BY INDICTMENT OR CRIMINAL**
 9 **INFORMATION WITH A CRIME TRIABLE IN CIRCUIT COURT AND CONVICTED OF**
 10 **THAT CRIME MAY**, at any time, ~~may~~ file a petition for writ of actual innocence in the
 11 circuit court for the county in which the conviction was imposed if the person claims
 12 that there is newly discovered evidence that:

13 (1) creates a substantial or significant possibility that the result may
 14 have been different, as that standard has been judicially determined; and

15 (2) could not have been discovered in time to move for a new trial
 16 under Maryland Rule 4–331.

17 (b) A petition filed under this section shall:

18 (1) be in writing;

19 (2) state in detail the grounds on which the petition is based;

20 (3) describe the newly discovered evidence;

21 (4) contain or be accompanied by a request for hearing if a hearing is
 22 sought; and

23 (5) distinguish the newly discovered evidence claimed in the petition
 24 from any claims made in prior petitions.

25 **(C) (1) A PETITIONER SHALL NOTIFY THE STATE IN WRITING OF THE**
 26 **FILING OF A PETITION UNDER THIS SECTION.**

27 **(2) THE STATE MAY FILE A RESPONSE TO THE PETITION WITHIN**
 28 **~~15~~ 90 DAYS AFTER RECEIPT OF THE NOTICE REQUIRED UNDER THIS**
 29 **SUBSECTION OR WITHIN THE PERIOD OF TIME THAT THE COURT ORDERS.**

30 **(D) (1) BEFORE A HEARING IS HELD ON A PETITION FILED UNDER**
 31 **THIS SECTION, THE VICTIM OR VICTIM’S REPRESENTATIVE SHALL BE NOTIFIED**
 32 **OF THE HEARING AS PROVIDED UNDER § 11–104 OR § 11–503 OF THIS ARTICLE.**

1 **(2) A VICTIM OR VICTIM’S REPRESENTATIVE HAS THE RIGHT TO**
2 **ATTEND A HEARING ON A PETITION FILED UNDER THIS SECTION AS PROVIDED**
3 **UNDER § 11–102 OF THIS ARTICLE.**

4 **[(c)] (E)** (1) Except as provided in paragraph (2) of this subsection, the
5 court shall hold a hearing on a petition filed under this section if the petition satisfies
6 the requirements of subsection (b) of this section and a hearing was requested.

7 (2) The court may dismiss a petition without a hearing if the court
8 finds that the petition fails to ~~state a claim or~~ assert grounds on which relief may be
9 granted.

10 **[(d)] (F)** (1) In ruling on a petition filed under this section, the court may
11 set aside the verdict, resentence, grant a new trial, or correct the sentence, as the
12 court considers appropriate.

13 (2) The court shall state the reasons for its ruling on the record.

14 **[(e)] (G)** A petitioner in a proceeding under this section has the burden of
15 proof.

16 **(H) (1) WITHIN 30 DAYS AFTER THE COURT PASSES AN ORDER IN**
17 **ACCORDANCE WITH THIS SECTION, THE STATE OR THE PETITIONER MAY**
18 **APPEAL THE ORDER TO THE COURT OF SPECIAL APPEALS.**

19 **(2) (I) THE APPEAL SHALL FOLLOW THE FORM AND**
20 **PROCEDURE SET BY THE MARYLAND RULES.**

21 **(II) IF THE STATE FILES AN APPEAL UNDER THIS**
22 **SUBSECTION, THE COURT MAY:**

23 **1. STAY THE ORDER; AND**

24 **2. SET BAIL FOR THE PETITIONER.**

25 **(III) AFTER HEARING AN APPEAL UNDER THIS SUBSECTION,**
26 **THE COURT OF SPECIAL APPEALS MAY:**

27 **1. AFFIRM, MODIFY, OR REVERSE THE ORDER**
28 **APPEALED FROM; OR**

29 **2. REMAND THE CASE FOR FURTHER PROCEEDINGS.**

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
31 measure, is necessary for the immediate preservation of the public health or safety,

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1 has been passed by a yea and nay vote supported by three-fifths of all the members
2 elected to each of the two Houses of the General Assembly, and shall take effect from
3 the date it is enacted.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.